



E 560-1
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

November 27, 1995

Ian Ace
4 Mimosa Way
Pinelands, South Africa

with an address at

A. Rosenthal (PTY) Ltd.
P.O. Box 44198
65 7th Street, Denmyr Building
2104 Linden, South Africa

Dear Mr. Ace:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter, the "Department"), has initiated an administrative proceeding against you by charging that you violated various provisions of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1995)), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1995)).¹ For your information, the document initiating the administrative proceeding is enclosed.

The purpose of this letter is to provide notice to you that an administrative proceeding has been initiated against you. The enclosed document sets forth the legal and factual basis for the Department's allegations, and provides further information concerning the administrative procedures applicable to the proceeding, including actions which you may take, if you so desire.

Sincerely,

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosure

¹ The Act expired on August 20, 1994. Executive Order 12924 (59 Fed. Reg. 43437, August 23, 1994), extended by Presidential Notice of August 15, 1995 (60 Fed. Reg. 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1994)).





E 560-2
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

NOV 27 1995

Ian Ace

individually with addresses at

4 Mimosa Way
Pinelands, South Africa

and

A. Rosenthal (PTY) Ltd.
P.O. Box 44198
65 7th Street, Denmyr Building
2104 Linden, South Africa

Dear Mr. Ace:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter, the "Department"), hereby charges that Ian Ace (hereinafter, "Ace"), has violated Sections 787.3(b), 787.4(a), 787.5(a), and 787.6 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1995)) (hereinafter, the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1995)) (hereinafter, the "Act"),² as set forth below.

Facts constituting violations:

¹ The Regulations governing the violations at issue are found in the 1990 version of the Code of Federal Regulations. Those Regulations are codified at 15 C.F.R. Parts 768-799 (1990). Between October 1, 1990 and March 27, 1993, the Regulations were continued in effect by Executive Order No. 12730 (55 Fed. Reg. 40373, October 2, 1990), issued pursuant to the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1994)) (hereinafter, "IEEPA").

² The Act expired on August 20, 1994. Executive Order 12924 (59 Fed. Reg. 43437, August 23, 1994) continued the Regulations in effect under IEEPA. Executive Order 12924 was extended by Presidential Notice of August 15, 1995 (60 Fed. Reg. 42767, August 17, 1995).



Charge 1

Between mid-1990 and early 1992, Ace conspired with James L. Stevens, in his capacity as president of Weisser's Sporting Goods, National City, California, and Karl Cording, individually and doing business as A. Rosenthal (PTY) Ltd., Windhoek, Namibia, with offices in Linden, South Africa and Cape Town, South Africa, to bring about acts that constituted violations of the Regulations. The purpose of the conspiracy was for the A. Rosenthal companies in Namibia and South Africa to acquire U.S.-origin Remington and Winchester Defender shotguns without applying for and obtaining from the Department the validated export licenses that the conspirators knew or had reason to know were required by Section 772.1(b) of the Regulations. On or about November 27, 1990, the conspirators exported those shotguns from the United States, using validated export licenses authorizing their export to Botswana and representing on export control documents that were submitted to the U.S. Customs Service that the shotguns would be shipped to Walvis Bay, Namibia, in transit to the ultimate consignee/end-user, Charleshill Trading Co. (PTY) Ltd., Ghanzi, Botswana. At all times during the conspiracy, Ace knew that Charleshill Trading Co. (PTY) Ltd. did not, in fact, exist, and that the shotguns he purported to export to Botswana were to be offloaded in Namibia and diverted to A. Rosenthal companies in Namibia and South Africa. By conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act or any regulation, order, or license issued under the Act, Ace violated Section 787.3(b) of the Regulations.

Charges 2-3

In furtherance of the conspiracy described in Charge 1 above, on or about November 27, 1990, the conspirators exported Remington shotguns from the United States to Namibia and South Africa, without obtaining from the Department the validated export license the conspirators knew or had reason to know was required by Section 772.1(b) of the Regulations. By exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued under the Act, Ace, as a co-conspirator, violated Section 787.6 of the Regulations. By selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued under the Act has occurred, is about to occur, or is intended to occur with respect to the transaction, Ace, as a co-conspirator, violated Section 787.4(a) of the Regulations.

Charges 4-5

In furtherance of the conspiracy described in Charge 1 above, on or about November 27, 1990, the conspirators exported Winchester Defender shotguns from the United States to Namibia and South Africa, without obtaining from the Department the validated export license the conspirators knew or had reason to know was required by Section 772.1(b) of the Regulations. By exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued under the Act, Ace, as a co-conspirator, violated Section 787.6 of the Regulations. By selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued under the Act has occurred, is about to occur, or is intended to occur with respect to the transaction, Ace, as a co-conspirator, violated Section 787.4(a) of the Regulations.

Charge 6

In furtherance of the conspiracy described in Charge 1 above, on or about November 27, 1990, the conspirators represented in a Shipper's Export Declaration, an export control document as defined in Section 770.2 of the Regulations, that was submitted to the U.S. Customs Service, that the goods described thereon, Remington shotguns, were being shipped for ultimate destination in Botswana. In fact, as the conspirators knew, the goods were intended for ultimate delivery to A. Rosenthal stores in Namibia and South Africa. By making false or misleading representations of material fact, directly or indirectly, to a United States government agency in connection with the preparation, submission, issuance, use or maintenance of an export control document, Ace, as a co-conspirator, violated Section 787.5(a) of the Regulations.

Charge 7

In furtherance of the conspiracy described in Charge 1 above, on or about November 27, 1990, the conspirators represented in a Shipper's Export Declaration, an export control document as defined in Section 770.2 of the Regulations, that was submitted to the U.S. Customs Service, that the goods described thereon, Winchester Defender shotguns, were being shipped for ultimate destination in Botswana. In fact, as the conspirators knew, the goods were intended for ultimate delivery to A. Rosenthal stores in Namibia and South Africa. By making false or misleading representations of material fact, directly or indirectly, to a United States government agency in connection with the preparation, submission, issuance, use or maintenance of an export control document, Ace, as a co-conspirator, violated Section 787.5(a) of the Regulations.

The Department alleges that Ace committed one violation of Section 787.3(b), two violations of Section 787.4(a), two violations of Section 787.5(a), and two violations of Section 787.6 of the Regulations, for a total of seven violations of the Regulations.

Accordingly, Ace is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 788 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Revocation of validated export licenses under Section 788.3(a)(1);

General denial of export privileges under Section 788.3(a)(2);

Exclusion from practice under Section 788.3(a)(3);
and/or

Imposition of the maximum civil penalty allowed by law of \$10,000 per violation or, for a violation of national security controls, \$100,000 per violation, under Section 788.3(a)(4).³

A copy of Parts 787 and 788 of the Regulations is enclosed.

If Ace fails to answer the charges contained in this letter within 30 days after service as provided in Section 788.7 of the Regulations, that failure will be treated as a default under Section 788.8.

Ace is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 788.7 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a consent settlement.

Ace's answer should be filed with the Office of the Administrative Law Judge/Export Control, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, in accordance with the instructions in Section 788.6 of the Regulations. In addition, a copy of Ace's answer should be served on the Department at the address set forth in Section 788.6, adding "ATTENTION: Jeffrey E.M. Joyner,

³ The maximum civil penalty allowed by law for violations that occur during periods when the Regulations are continued in effect by an Executive Order issued pursuant to IEEPA is \$10,000 per violation.

Esq." below the address. Please note that the room number for the Department is H-3839. Mr. Joyner may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
IAN ACE)
)
with addresses at)
)
4 Mimosa Way)
Pinelands, South Africa,)
)
A. Rosenthal (PTY) Ltd.)
P.O. Box 3721)
13 Loop Street)
Cape Town, South Africa,)
)
and)
)
A. Rosenthal (PTY) Ltd.)
P.O. Box 44198)
65 7th Street, Denmyr Building)
2104 Linden, South Africa,)
)
Respondent)

RECOMMENDED DECISION AND DEFAULT ORDER

On November 27, 1995, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Ian Ace. The charging letter alleged that Ace committed seven violations of the Export Administration Regulations

(currently codified at 15 C.F.R. Parts 730-774 (1997)) (hereinafter the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (hereinafter the "Act").²

Specifically, the charging letter alleged that, between mid-1990 and early 1992, Ace, manager of A. Rosenthal (PTY) Ltd., Cape Town, South Africa, conspired with James L. Stephens, president and co-owner of Weisser's Sporting Goods, National City, California, and Karl Cording, co-owner and managing director of A. Rosenthal (PTY) Ltd., Windhoek, Namibia, to export and, on two separate occasions, actually exported U.S.-origin shotguns, with barrel lengths of 18 inches and over, to Namibia and South Africa, without applying for and obtaining from the United States Department of Commerce the validated export licenses Ace knew or had reason to know were required under the Act and Regulations. In addition, BXA alleged that, in furtherance of the conspiracy, and in connection with each of those exports, Ace made false or misleading representations of material fact to a U.S. Government agency in connection with the preparation, submission, or use of export control documents.

¹ The alleged violations occurred between mid-1990 and early 1992. The Regulations governing the violations at issue are found in the 1990, 1991, and 1992 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1990, 1991, and 1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, currently codified at 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this recommended decision and default order.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

BXA alleged that, in so doing, Ace committed one violation of Section 787.3(b), two violations of Section 787.4(a), two violations of Section 787.5(a), and two violations of Section 787.6 of the former Regulations, for a total of seven violations of the former Regulations.

BXA issued a charging letter to Ace at his residential address in Pinelands, South Africa, and at his business address in Linden, South Africa. BXA has presented evidence that Cording was served with notice of issuance of the charging letter at his Linden, South Africa, business address on December 9, 1995.³ As of the date of this Recommended Decision and Order, Ace has not answered the charging letter and is, therefore, in default.

On the basis of BXA's submission and all of the supporting evidence presented, and pursuant to the default procedures set forth in Section 766.7 of the Regulations, I find the facts to be as alleged in the charging letter and hereby conclude that Ace committed one violation of Section 787.3(b), two violations of Section 787.4(a), two violations of Section 787.5(a), and two violations of Section 787.6 of the former Regulations, for a total of seven violations of the former Regulations.

In its motion, BXA urged as a sanction that Ace's export privileges be denied for a period of 20 years. BXA reasons that denial of Ace's export privileges is appropriate because he violated U.S. export control laws during a period when the United States severely restricted trade with South Africa. At the time Ace committed the violations, exports to

³ The copy of the charging letter addressed to Ace at his residential address was returned to BXA during April 1996. (It had been marked by South African postal authorities as "Unclaimed".) On April 24, 1996, BXA sent a copy of the November 27, 1995 charging letter to Ace at a second business address in Cape Town, South Africa. Ace received this copy of the charging letter on June 13, 1996.

Namibia and South Africa of shotguns (with barrel lengths of 18 inches and over) were strictly controlled. As such, even if Ace had filed an export license application, BXA states that the general policy would have been to deny authorization.

BXA asserts that the denial of all of Ace's export privileges is appropriate because it is unlikely that Ace would ever pay a civil monetary penalty, rendering any such judgment meaningless. Further, because Ace is a foreign person, BXA could not obtain the personal jurisdiction over him necessary to collect civil monetary penalties through the courts.

Lastly, BXA argues that, since Ace is charged with the same violations as his co-conspirators, the penalty imposed on him should be, at the very least, as stringent as those imposed on his co-conspirators. Stephens, a U.S. respondent, and his California-based company paid \$90,000 in administrative and criminal penalties, was placed on three years' probation, and was denied all U.S. export privileges for a period of 15 years. Cording, a foreign respondent, was denied all U.S. export privileges for a period of 20 years. BXA posits that it is not unreasonable that Ace's export privileges should be denied for the same length of time as Cording's.

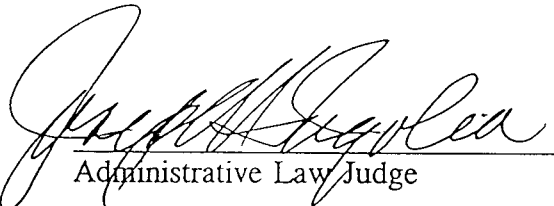
Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against Ace, denying all of his export privileges for a period of 20 years.

I am referring my Recommended Decision and Order to the Under Secretary for review and final action for the agency. As provided by Section 766.17(b)(2) of the Regulations, I am serving the Recommended Decision and Order on all parties by overnight carrier. Because the Under Secretary must review the decision in a short time frame, all papers filed with the Under Secretary in response to my Recommended Decision and Order

must be sent by personal delivery, facsimile, express mail or other overnight carrier, as provided in Section 766.22(a) of the Regulations. Submissions by the parties involved in the proceedings must be filed with the Under Secretary for Export Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 3898B, Washington, D.C. 20230, within 12 days from the date of issuance of this recommended decision and order. Parties thereafter have eight days from receipt of any response(s) in which to submit replies.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the recommended decision and order. *See*, 15 C.F.R. § 766.22(c) (1997).

Dated: July 8th 1997


Administrative Law Judge

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
IAN ACE)
)
with addresses at)
)
4 Mimosa Way)
Pinelands, South Africa,)
)
A. Rosenthal (PTY) Ltd.)
P.O. Box 3721)
13 Loop Street)
Cape Town, South Africa,)
)
and)
)
A. Rosenthal (PTY) Ltd.)
P.O. Box 44198)
65 7th Street, Denmyr Building)
2104 Linden, South Africa,)
)
Respondent)

DECISION AND ORDER

On November 27, 1995, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Ian Ace. The charging letter alleged that Ian Ace committed seven violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (hereinafter the "Regulations"),¹ issued

¹ The violations at issue occurred between mid-1990 and early 1992. The Regulations governing those violations are found in the 1990, 1991, and 1992 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1990, 1991, and 1992)) and are referred to

pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app.

§§ 2401-2420) (hereinafter the "Act").²

Specifically, the charging letter alleged that, between mid-1990 and early 1992, Ace, manager of A. Rosenthal (PTY) Ltd., Cape Town, South Africa, conspired with James L. Stephens, president and co-owner of Weisser's Sporting Goods, National City, California, and Karl Cording, co-owner and managing director of A. Rosenthal (PTY) Ltd., Windhoek, Namibia, to export and, on two separate occasions, actually exported U.S.-origin shotguns, with barrel lengths of 18 inches and over, to Namibia and South Africa, without applying for and obtaining from the U.S. Department of Commerce the validated export licenses Ace knew or had reason to know were required under the Act and Regulations. In addition, BXA alleged that, in furtherance of the conspiracy, and in connection with each of those exports, Ace made false or misleading representations of material fact to a U.S. Government agency in connection with the preparation, submission, or use of export control documents. BXA alleged that, in so doing, Ace committed one violation of Section 787.3(b), two violations of Section 787.4(a), two violations of Section 787.5(a), and two violations of Section 787.6 of the former Regulations, for a total of seven violations of the former Regulations.

hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, currently codified at 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this Decision and Order.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C. §§ 1701-1706).

BXA issued a charging letter to Ace at his residential address in Pinelands, South Africa, and at his business address in Linden, South Africa. BXA has presented evidence that Ace was served with notice of issuance of the charging letter at his Linden, South Africa, business address on December 9, 1995.³ Ace failed to answer the charging letter. Thus, on June 26, 1997, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, on July 8, 1997, Chief Administrative Law Judge Joseph A. Angel issued a Recommended Decision and Default Order in which he found the facts to be as alleged in the charging letter. He concluded that those facts constituted violations of the Act and Regulations. The Administrative Law Judge also concurred with BXA's recommendation that the appropriate penalty to be imposed for these violations is a denial, for a period of 20 years, of all of Ace's export privileges. As provided by Section 766.22(a) of the Regulations, the Administrative Law Judge referred the Recommended Decision and Order to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the Administrative Law Judge. I believe that the Administrative Law Judge's recommended denial of export privileges for 20 years is

³ The copy of the charging letter addressed to Ace at his residential address was returned to BXA during April 1996. (It had been marked by South African postal authorities as "Unclaimed".) On April 24, 1996, BXA sent a copy of the November 27, 1995 charging letter to Ace at a second business address in Cape Town, South Africa. Ace received this copy of the charging letter on June 13, 1996.

appropriate. This case is aggravated by the fact that Ace violated export controls that were designed to express U.S. abhorrence with apartheid as then practiced in South Africa. These violations were serious and undermined important U.S. foreign policy interests. A lengthy period of denial will help keep U.S.-origin items out of his hands and make future violations less likely. Finally, this penalty is, as the Administrative Law Judge explained, consistent with the penalties received by the other participants in these violations.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that for a period of 20 years from the date of this Order, Ian Ace, with the following addresses, 4 Mimosa Way, Pinelands, South Africa; A. Rosenthal (PTY) Ltd., P.O. Box 3721, 13 Loop Street, Cape Town, South Africa; and A. Rosenthal (PTY) Ltd., P.O. Box 44198, 65 7th Street, Denmyr Building, 2104 Linden, South Africa, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or

otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or

controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

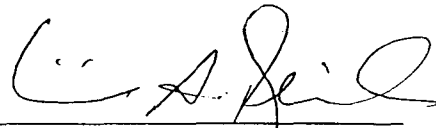
THIRD, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that a copy of this Order shall be served on Ace and BXA, and shall be published in the *Federal Register*.

This Order, which constitutes final agency action in this matter, is effective immediately.

Dated: August 8, 1997



William A. Reinsch
Under Secretary for
Export Administration